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SENATE

{ REPORT  
No. 91-60

## STUDY OF CONSTITUTIONAL RIGHTS

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FEBRUARY 7, 1969.—Ordered to be printed  
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Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, submitted the following

### REPORT

[To accompany S. Res. 43]

The Committee on Rules and Administration, to which was referred the resolution (S. Res. 43) authorizing an investigation of matters pertaining to constitutional rights, having considered the same, reports favorably thereon with an amendment and recommends that the resolution as amended be agreed to.

Senate Resolution 43 as referred would authorize the expenditure of not to exceed \$220,000 by the Committee on the Judiciary, acting through its Subcommittee on Constitutional Rights, from February 1, 1969, through January 31, 1970, "to examine, investigate, and make a complete study of any and all matters pertaining to constitutional rights."

The Committee on Rules and Administration has amended Senate Resolution 43 by reducing the requested amount from \$220,000 to \$200,000—a reduction of \$20,000.

Moneys authorized by the Senate for the same purpose during the 88th, 89th, and 90th Congresses, and expenditures by the committee therefrom through December 31, 1968, are as follows:

	<i>Authorized</i>	<i>Expended</i>
88th Cong.:		
1st sess.....	\$152,300.00	\$132,100.60
2d sess.....	165,000.00	160,624.73
Total.....	317,300.00	292,725.33
89th Cong.:		
1st sess.....	195,000.00	180,240.66
2d sess.....	195,000.00	185,402.16
Total.....	390,000.00	365,642.82
90th Cong.:		
1st sess.....	195,000.00	193,016.35
2d sess.....	220,000.00	175,860.40
Total.....	415,000.00	368,876.75

The purposes of Senate Resolution 43 are detailed in a letter from Senator Sam J. Ervin, Jr., chairman of the Subcommittee on Constitutional Rights, to Senator James O. Eastland, chairman of the Committee on the Judiciary, which letter (with accompanying budget) and letter of transmittal from Senator Eastland to Senator B. Everett Jordan, chairman of the Committee on Rules and Administration, are as follows:

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., January 24, 1969.

Re Senate Resolution 43.

Hon. B. EVERETT JORDAN,  
Chairman, Committee on Rules and Administration,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing the budget approved by our Committee on the Judiciary for work of the standing Subcommittee on Constitutional Rights for the period February 1, 1969, to January 31, 1970. The committee authorized reporting an original resolution, Senate Resolution 43, to provide the amount of \$220,000 for the work of the subcommittee during the period February 1, 1969, through January 31, 1970.

Also enclosed for the information of the Committee on Rules and Administration in considering the resolution is a letter to me from the subcommittee chairman summarizing the proposed program for the subcommittee.

With kindest regards, I am,  
Sincerely,

JAMES O. EASTLAND,  
Chairman.

COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,  
*Washington, D.C., January 17, 1969.*

Re Pursuant to S. Res. 236, 90th Congress.

Hon. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The members of the standing Subcommittee on Constitutional Rights have approved the following program and budget for the first session of the 91st Congress. As subcommittee chairman, I submit these plans, with a draft resolution, for the consideration of the Committee on the Judiciary.

The new resolution which we are submitting proposes the sum of \$220,000 to cover legal, investigative and administrative expenses anticipated by the subcommittee in its study of constitutional rights during the period from February 1, 1969, to January 31, 1970. This is the same amount authorized for 1968.

I believe this proposed budget is justified in view of the varied and challenging agenda offered for this year. Although no new studies are planned for this session, previous studies will be continued and the scope of several current studies will be expanded. Subjects under investigation and study during this time will continue to be: bail reform and individual rights in the administration of criminal justice; the right of privacy of civil servants and other citizens; the constitutional rights of juveniles; the guarantees of a free press and fair trial; the constitutional rights of servicemen; the constitutional rights of the American Indian; the first amendment and separation of church and State; and the constitutional rights of the mentally ill. In addition to these matters, the subcommittee will consider any legislation referred to it.

In view of forthcoming hearings, the subcommittee anticipates increased correspondence, office interviews, requests from other congressional offices and the public for information and assistance, and liaison with other congressional committees, governmental agencies, and private organizations. As we have each year, we expect to continue to receive and respond to countless individual complaints from citizens on a wide range of constitutional questions. Of the correspondence from the public on all subjects during the last session, certain individual complaints were examined and considered for their relevance to legislative studies. In many instances, one complaint represented several hundred individuals. These included approximately 200 civil servant complaints; 59 military complaints; 98 Indian complaints; and 100 complaints concerning census and other government questionnaires.

The proposed budget will allow us to continue investigations and to conduct hearings on these subjects in accordance with the detailed description which follows.

## PROPOSED ACTIVITIES

### REFORM OF FEDERAL BAIL PROCEDURES

January hearings will focus on special problems experienced in the District of Columbia during implementation of the Federal Bail Reform Act. Together with bail procedures, this investigation also encompasses issues of preventive detention, speedy trial, crowded dockets, and the administrative obstacles to due process and to the prompt dispensing of justice to criminal offenders. Out of the 1968 staff study and the 1969 hearings will be formulated guidelines for operational and legislative changes in the Bail Reform Act and other Federal statutes and in the District of Columbia Code. Following hearings, proposed legislation will be drafted and will be the subject of a second set of hearings before this subcommittee tentatively scheduled for late March or early April.

### RIGHT TO COUNSEL

On the basis of staff investigations last year, hearings will be scheduled in 1969 to consider the operation of the Criminal Justice Act of 1964, designed to assure adequate representation in Federal courts of accused persons with insufficient means for their defense. These hearings are expected to produce proposals for legislative changes which will better enable Federal courts to carry out their responsibility for assuring the right to counsel.

### CONSTITUTIONAL RIGHTS OF SERVICEMEN

The Military Justice Act of 1968 contained Senate amendments with important procedural guarantees in military courts-martial, which were based on the subcommittee's 8-year study of military rights and resulting legislative proposals. The act, however, did not deal with the acutely deficient area of administrative discharge procedures, nor did it make changes in the military appellate structure. The subcommittee plans to continue its work on legislation on these subjects. We anticipate cooperation from the armed services and expect that joint hearings with the Armed Services Committee in 1969 will lead to enactment of a second military justice act which will deal with administrative discharges and the military appellate structure.

### CONSTITUTIONAL RIGHTS OF JUVENILES

Preliminary staff research and investigations were undertaken during the last session on the crucial subject of the rights of juveniles in the administration of justice. A survey of the opinions of the States' attorneys general is underway, and the staff is now compiling relevant State and Federal statutes, court decisions and rules, and other materials. The subcommittee plans to publish these materials in the form of a handbook on juvenile rights.

A subcommittee survey is also underway to obtain the advice and views of scholars in the field of juvenile rights and related fields, of attorneys familiar with juvenile cases, and of many other persons interested in civil liberties and individual rights.

A series of hearings will be held in 1969 which will constitute a forum for expert testimony to help the subcommittee determine the extent to which the constitutional rights of youthful offenders are observed and protected under current police and governmental practices, judicial decisions, and Federal laws.

#### PRIVACY AND INDIVIDUAL RIGHTS

##### *Federal employees*

As a result of the subcommittee's investigations and other congressional inquiries, some administrative changes have been ordered to provide greater protections for constitutional rights of Government employees and to prohibit unwarranted invasion of their privacy. These have not, however, touched the basic difficulties in this area of the law as uncovered by the subcommittee study, nor have they made the Government-wide alterations in legal and administrative machinery which the subcommittee has found necessary. There is, therefore, a continuing need for legislation to protect the rights and privacy of employees and applicants. The House did not approve S. 1035, the bill reported by the subcommittee in 1967 and passed by the Senate, to protect employees' constitutional rights and prohibit unwarranted invasion of their privacy. In view of the continuing support for this bill from Congress, the public, and Federal employees, the subcommittee will continue to direct its efforts toward prompt enactment of this legislation in this session and to investigation of complaints related to it.

Other governmental actions which might tend to violate basic rights to due process or invade personal privacy will continue to come under investigation for the purpose of encouraging administrative reform wherever possible. These include:

- (1) Investigative processes of the Civil Service Commission and other agencies;
- (2) Procedures under which individuals may be ordered for psychiatric examinations and involuntarily retired from Government employment;
- (3) Procedures under which security clearances may be granted, suspended, or withdrawn;
- (4) Procedures governing the use and confidentiality of medical records for employment and other purposes;
- (5) Administrative and judicial procedures for registering complaints about Government infringement on the privacy of employees or other citizens; and
- (6) Improper withholding of records and Government information.

#### FEDERAL QUESTIONNAIRES AND THE CENSUS BUREAU

Staff research and investigations were continued in the last session on unwarranted privacy invasion and governmental soliciting of information from citizens. There is intense congressional and public interest in the power of the Census Bureau to solicit personal data from citizens for itself and other agencies. Use of the sanctions of the Federal criminal law for this purpose has been of particular concern.

The extent of this authority, who exercises it and for what purposes, and what rights a citizen has who receives questionnaires will be the subject of hearings early in this session.

#### CONSTITUTIONAL RIGHTS OF AMERICAN INDIANS

Investigation will continue of written and oral complaints from Indians throughout the country who encounter constitutional problems in dealing with tribal governments or State or Federal authorities. In addition, special attention will be devoted to monitoring the implementation of the Indian rights titles of the Civil Rights Act of 1968.

These statutory guarantees, which were added as Senate amendments to the civil rights measure, H.R. 2516, are identical to S. 1843, an omnibus measure based on the subcommittee study and unanimously passed by the Senate in 1967. The subcommittee will continue to work closely with individual Indians, Indian tribes and the Bureau of Indian Affairs to assure an orderly transition from the traditional form of Indian government to one that will meet the requirements of the new act. We shall also remain alert to special legislative problems which may develop in the operation of the act.

#### THE FIRST AMENDMENT AND SEPARATION OF CHURCH AND STATE

The subcommittee will maintain its concern with guarantees of first amendment freedoms and the principles of separation of church and state. Complaints of any administrative denials of constitutional rights in this area of the law will continue to be investigated.

#### RIGHTS OF THE MENTALLY ILL

Our review of the operation of the 1964 act for the hospitalization of the mentally ill in the District of Columbia will be continued. We shall also continue to deal with complaints and requests for information relating to constitutional issues in the field of mental health and the rights of the mentally ill.

#### FREE PRESS AND FAIR TRIAL

The subcommittee will continue its concern for the protection of the guarantees of a free press and the right of defendants to fair trial without prejudicial publicity. Analysis is continuing of reports and recommendations of numerous press and bar associations and of the Judicial Conference of the United States on this subject. Implementation by Federal courts of suggested guidelines will be monitored and complaints investigated with a view to determining the need for legislation to protect constitutional guarantees.

#### MISCELLANEOUS

Within the limits of its jurisdiction, the subcommittee will examine, on an individual basis, other complaints which raise serious questions of infringement of constitutional rights.

I believe the subcommittee has to its credit many achievements in the furtherance of the rights of all Americans. During the first session

of the 91st Congress, it is our intention in each of the subjects under study to determine the need for legislation to further protect constitutional rights and liberties. In view of the importance to every citizen of our work on the problems outlined here, I request on behalf of the subcommittee that our program and budget for 1969 be approved.

With all kind wishes, I am,  
Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

PROPOSED BUDGET

Position	Number	Annual salary	Monthly salary	Total for period of budget
STAFF				
Legal and investigative:				
Chief counsel and staff director.....	1	\$24,676	\$2,056.35	\$24,676.00
Minority counsel.....	1	22,288	1,856.50	22,288.00
Counsel.....	2	13,930	1,160.83	27,860.00
Do.....	1	13,134	1,094.50	13,134.00
Do.....	1	10,149	845.75	10,149.00
Editorial and research:				
Professional staff member.....	1	16,716	1,393.00	16,716.00
Research assistant.....	1	7,562	630.17	7,562.00
Do.....	1	6,368	530.67	6,368.00
Administrative and clerical:				
Chief clerk.....	1	12,736	1,061.34	12,736.00
Secretary.....	1	11,343	945.25	11,343.00
Do.....	1	10,746	895.50	10,746.00
Do.....	1	7,960	663.33	7,960.00
Do.....	1	7,562	630.17	7,562.00
Do.....	1	6,965	580.42	6,965.00
Total.....	15			186,065.00

ADMINISTRATIVE

Contribution to employees health benefit programs (\$8.88 per month per employee).....	1,598.40
Contribution to civil service retirement fund (6½ percent of total salaries paid).....	12,094.23
Contribution to employees Federal employees group life insurance (30 cents per month per \$1,000 coverage).....	734.40
Reimbursable payments to agencies.....	
Travel (inclusive of field investigations).....	1,000.00
Hearings (inclusive of reporters' fees).....	8,000.00
Witness fees, expenses.....	6,000.00
Stationery, office supplies.....	1,500.00
Communications (telephone, telegraph).....	1,500.00
Newspapers, magazines, documents.....	1,500.00
Contingent fund.....	7.97
Total.....	33,935.00
Grand total.....	220,000.00

Funds requested, Senate Resolution 43, \$220,000; funds approved by Committee on Rules and Administration, \$200,000 (—\$20,000).

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